



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0020; Notice 2]

**Volkswagen Group of America, Inc., Grant of Petition for
Decision of Inconsequential Noncompliance**

AGENCY: National Highway Traffic Safety Administration (NHTSA),
Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Volkswagen Group of America, Inc. (Volkswagen), has determined that certain model year (MY) 2012-2017 Volkswagen motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems for Light Vehicles*. Volkswagen filed a noncompliance report dated March 1, 2017, and later revised it on December 21, 2017. Volkswagen also petitioned NHTSA on March 2, 2017, and amended the petition on December 21, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of this petition.

FOR FURTHER INFORMATION CONTACT: Vince Williams, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-2319, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: Volkswagen, has determined that certain MY 2012-2017 Volkswagen motor vehicles do not fully comply with paragraph S5.3.3 of FMVSS No. 126, *Electronic Stability Control Systems for Light Vehicles* (49 CFR 571.126). Volkswagen filed a noncompliance report dated March 1, 2017, and later revised it on December 21, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Volkswagen also petitioned NHTSA on March 2, 2017, and amended the petition on December 21, 2017, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556.

Notice of receipt of the petition was published with a 30-day public comment period, on May 18, 2017, in the **Federal Register** (82 FR 22869). No comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number "NHTSA-2017-0020."

II. Vehicles Involved: Approximately 53,911 MY 2013-2017 Volkswagen CC motor vehicles, manufactured between January 19, 2012, and November 28, 2016, and approximately 176,547 MY 2012-2017 Volkswagen Tiguan motor vehicles, manufactured between

January 9, 2012, and February 28, 2017, are potentially involved.

Volkswagen revised its noncompliance report and amended its petition on December 21, 2017, to include approximately 12,541 MY 2015-2017 Audi Q3 motor vehicles, manufactured between April 16, 2014, and June 25, 2015, thus, bringing the new total of potentially affected vehicles to 242,999.

III. Noncompliance: Volkswagen explains that during an electronic stability control (ESC) malfunction in the subject vehicles, the ESC system malfunction telltale illuminates as required by FMVSS No. 126 unless the steering angle sensor is the source of the malfunction. In the instance of a steering angle sensor malfunction, the ESC system malfunction telltale does not re-illuminate immediately after the vehicle ignition is reactivated, as required by paragraph S5.3.3 of FMVSS No. 126. Specifically, the ESC system malfunction telltale will only re-illuminate after the vehicle reaches a speed of 1.2 mph and will remain continuously illuminated thereafter as required by FMVSS No. 126 for the rest of the ignition cycle regardless of vehicle speed.

IV. Rule Requirements: Paragraph S5.3.3 of FMVSS No. 126, includes the requirements that, subject to the exceptions not relevant to this petition, the ESC malfunction telltale must illuminate when an ESC malfunction exists and must remain

continuously illuminated as long as the malfunction exists whenever the ignition locking system is in the "On" position.

V. Summary of Volkswagen's Petition: Volkswagen stated that the condition described above is inconsequential as it relates to motor vehicle safety because the warning (ESC system malfunction telltale) immediately re-illuminates when the vehicle starts to move and reaches 2 km/h or 1.2 mph.

Furthermore, Volkswagen explained that the condition is limited to an ESC system fault caused by the steering angle sensor. For all other potential ESC system faults, the ESC system malfunction telltale illuminates as required with the next ignition key in the "On" ("Run") position.

Volkswagen concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Volkswagen's petition analyses and supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov> and following the online search instructions to locate the docket number listed in the heading of this notice.

NHTSA's Analysis: NHTSA has reviewed Volkswagen's analyses that the subject noncompliance is inconsequential to motor vehicle safety. Specifically, in the instance of a steering angle sensor malfunction, the ESC system malfunction telltale does not re-illuminate immediately after the vehicle ignition is reactivated as required by paragraph S5.3.3 of FMVSS No. 126.

Volkswagen explained that the ESC system malfunction telltale does not re-illuminate when the ignition is reactivated as required, however, it does illuminate immediately when the vehicle starts to move and reaches 2 km/h or 1.2 mph. Volkswagen stated that this specific condition is limited only to a malfunction caused by the steering angle sensor and that for all other potential ESC system malfunctions, the telltale illuminates as required when the ignition locking system is in the "On" ("Run") position.

On March 28, 2017, and November 16, 2017, NHTSA contacted Volkswagen to request additional information regarding the behavior of the ESC system malfunction telltale. In response to those requests, Volkswagen explained that these vehicles were originally designed with the 2km/h (1.2 mph) threshold to prevent nuisance ESC system malfunction telltale activations during steering component workshop troubleshooting and repairs. Volkswagen clarified that during subsequent ignition cycles, the ESC system malfunction telltale on these vehicles illuminates

after the vehicle speed reaches 2 km/h or 1.2 mph and stays illuminated for the entire ignition cycle regardless of vehicle speed (i.e., even if the vehicle speeds falls back down below 2km/h or 1.2 mph). Volkswagen added that these vehicles are also equipped with a separate Electronic Power Steering (EPS) warning light, on the dashboard in clear view of the driver, that illuminates when the steering angle sensor malfunctions, and is illuminated during the period of time the ESC malfunction telltale is required to illuminate but does not.

The agency believes that the subject noncompliance poses no significant risk to motor vehicle safety as discussed below. If the vehicle is in operation when a steering angle sensor malfunction first occurs, the ESC malfunction telltale will illuminate and stay illuminated as required by the standard until the vehicle's ignition is turned off. It is only upon re-activation of the ignition system that the malfunction telltale does not re-illuminate immediately but then does so very quickly when the vehicle begins to move. After the telltale does re-illuminate, it remains illuminated, regardless of vehicle speed, until the malfunction is corrected or the ignition is deactivated once again. The ESC malfunction telltale will not illuminate for very short periods of time, between when the ignition is activated and the vehicle reaches a speed of 2 km/h. If this condition ever occurs, it will take place for a very

short duration of time at very low speeds, conditions under which a vehicle loss of control due to instabilities that require the ESC system to activate will not occur.

Finally, Volkswagen did mention that these vehicles are also equipped with a separate EPS warning light that when activated is on the dashboard in clear view of the driver. The symbol used for the EPS telltale is a vehicle's steering wheel. This telltale will illuminate when the steering angle sensor malfunctions, and is illuminated during the period-of-time the ESC malfunction telltale is required to illuminate but does not.

NHTSA's Decision: In consideration of the foregoing, NHTSA finds that Volkswagen has met its burden of persuasion that the FMVSS No. 126 noncompliance is inconsequential as it relates to motor vehicle safety. Accordingly, Volkswagen's petition is hereby granted and Volkswagen is consequently exempted from the obligation to provide notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the

subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Michael A. Cole,

Acting Director, Office of Vehicle Safety Compliance.

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